

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Romero Analyst: Marion Mann DeJong Bill Number: SB 203  
Related Bills: See Legislative History Telephone: 845-6979 Introduced Date: 02/13/2003  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Polluted Brownfield Property Cleanup Costs Credit

### SUMMARY

This bill would create an income tax credit for the cost of cleaning up polluted brownfield property.

### PURPOSE OF THE BILL

According to the author's staff, this bill is intended for development into an incentive for cleaning up polluted property known as "brownfields."

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately upon enactment. However, the bill specifies that it would be operative for taxable years beginning on or after January 1, 2003, and before January 1, 2013.

### POSITION

Pending.

### Summary of Suggested Amendments

Amendments are necessary before this bill can be implemented. See "Implementation Considerations" and "Technical Considerations" below. According to the author's staff this is a spot bill and will be further developed.

### ANALYSIS

#### FEDERAL/STATE LAW

Existing state and federal laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life. If the expense is not subject to depreciation, it is added to the cost basis of the property.

Board Position:

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<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director  
Gerald H. Goldberg

Date  
03/06/03

Existing state and federal laws allow taxpayers to elect to currently deduct certain environmental cleanup costs. This election is generally available for qualified environmental cleanup costs paid or incurred after August 5, 1997, and before January 1, 2004. However, because California did not conform to federal changes to the election until 2002, the election was unavailable for California income tax purposes during the 2001 tax year. A federal election is binding for California purposes.

For purposes of the election, environmental cleanup costs are costs paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A site is not eligible for the election if it is on, or proposed for, the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. To claim the deduction:

- the property must be held by the taxpayer for use in a trade or business, for the production of income, or as stock in trade or inventory,
- there must have been a release, threat of release, or disposal of a hazardous substance on or at the property, and
- the taxpayer must receive certification from a state environmental agency that the expenses were paid or incurred in connection with the abatement or control of hazardous substances at the qualified contaminated site.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake. There currently are no federal or state credits for clean up of polluted property.

### THIS BILL

This bill would create a credit equal to an unspecified percentage of the costs paid or incurred during the taxable year to clean up a polluted "brownfield" property to a satisfactory level. The credit would be allowed to the qualified "brownfield" property owner. Excess credit amounts could be carried forward until exhausted.

### IMPLEMENTATION CONSIDERATIONS

For the reasons listed below, this bill cannot be implemented as currently drafted. Department staff is available to assist the author with any necessary amendments. Additional considerations may be identified as the bill is developed.

- The bill does not define the terms "qualified brownfield property owner" or "brownfield property." Undefined terms can lead to disputes between taxpayers and the department.
- The bill does not specify what constitutes "clean up" of a polluted brownfield property to a "satisfactory level." This must be known in order to determine whether costs qualify for the credit.
- The bill mentions that a satisfactory level would be evidenced by a "written certification of completion." However, there is no indication of who is responsible for issuing the certificate of completion. Since department staff does not possess expertise regarding clean up of polluted property, we suggest that an agency such as the California Environmental Protection Agency be charged with this function.

## TECHNICAL CONSIDERATIONS

The bill allows a credit to a “qualified ‘brownfield’ property owner.” Generally, credits are allowed to “taxpayers” that meet specified requirements. In addition, the bill does not limit the credit to Brownfield’s located in California.

## **OTHER STATES’ INFORMATION**

The laws of Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York were reviewed because their tax laws are similar to California’s income tax laws. Illinois, Massachusetts, Minnesota, and New York do not provide a credit comparable to the credit allowed by this bill. However, Florida and Michigan do provide brownfield credits.

*Florida* allows a credit equal to 35% of the costs of voluntary cleanup of brownfield sites located in designated brownfield areas. In the final year of cleanup, taxpayers may claim a credit for an additional 10% of the total cleanup costs, up to \$50,000. The credit is limited to \$250,000 for each site voluntarily rehabilitated.

*Michigan* allows a brownfield credit against the Single Business Tax to taxpayers that are issued a pre-approval letter for an eligible project by the Department of Treasury or the Michigan Economic Growth Authority. The project must be completed within five years of the pre-approval letter. Generally, the credit is claimed in the year the certificate of completion is issued to the taxpayer. The credit amount is generally 10% of the eligible investment.

## **FISCAL IMPACT**

The department's costs to administer this bill cannot be determined until the bill is further developed.

## **ECONOMIC IMPACT**

The revenue impact cannot be determined until a credit percentage is given and the bill is further developed.

## **LEGISLATIVE STAFF CONTACT**

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